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d/b/a ELCO Lighting and Elco Lighting, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DMF, Inc., a California corporation,

Plaintiff,

v.

AMP PLUS, INC., d/b/a ELCO
LIGHTING, a California corporation;
ELCO LIGHTING, INC., a California
corporation,

Defendants.

AND RELATED COUNTER-
ACTIONS.

Case No. 2:18-cv-07090-CAS-GJS

[Hon. Christina A. Snyder]

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S EX PARTE
APPLICATION TO PERMIT
FILING OF SUR-REPLY
DECLARATION TO ADDRESS
NEW ARGUMENT AND FACTUAL
MISREPRESENTATIONS ELCO
MADE IN ITS REPLY ON MOTION
TO AMEND**

350 West First Street, Los Angeles, CA
Courtroom 8D

DMF's *Ex Parte* Application (Dkt. 221) should be denied because it fails to establish good cause for extraordinary relief. Instead, DMF merely wants the last word on an opposing party's motion.

Defendants' Motion for Leave to Amend is Defendants' motion, not DMF's motion, and entitles Defendants to a reply brief. As with any other motion, the reply brief concludes briefing on the motion.

DMF's Application fails to inform the Court that DMF waited until serving its Reply Claim Construction Brief to disclose to Defendants its intention to assert constructions for seven additional terms. *See* Dkt. 192-1, Exh. J. Under the Court's order regarding disclosure and briefing of claim construction terms (Dkt. 129), and the parties' agreement regarding briefing, DMF was only allowed to argue in its Reply Claim Construction Brief that Defendants' claim terms that DMF did not also identify need no construction and should be given their plain and ordinary meaning. This is the only position DMF could have taken to be consistent with its failure to identify those same terms as needing construction. Defendants, on the other hand, complied with the Court's order and the parties' agreement, by taking that position in their Reply Claim Construction Brief with respect to two of DMF's identified terms which Defendants did not identify.

By offering constructions for seven claim terms which DMF never identified, DMF failed to provide Defendants an opportunity to respond to DMF's proposed constructions. That is how DMF sandbagged Defendants. Defendants' Reply Brief on the Motion to Amend merely pointed that out to the Court, and accurately so, because it is indicative of how DMF wants to litigate this case – with an unlevel playing field – and opposes Defendants' proposed amendments so that this case can be decided on the merits.

DMF's *Ex Parte* Application is just another example of how DMF wants to litigate this case with an unlevel playing field. DMF filed 14 pages in connection

1 with its Application, yet failed to offer any explanation for its violation of the
2 Court's order regarding disclosure and briefing of its claim construction proposals.

3 The parties' dispute regarding DMF's actions is nonetheless tangential to
4 Defendants' Motion for Leave to Amend. DMF's Application fails to demonstrate
5 sufficient good cause for the extraordinarily relief of filing a sur-reply, when it is
6 clear that DMF merely wants to have the last word.

7 The Court should deny DMF's Application.

8 Dated: June 12, 2019

BRYAN CAVE LEIGHTON PAISNER LLP
Robert E. Boone III

9
10 By: /s/ Robert E. Boone III

Robert E. Boone III

11 Attorneys for Defendants

12 AMP Plus, Inc. d/b/a ELCO Lighting and Elco
13 Lighting, Inc.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 120 Broadway, Suite 300, Santa Monica, CA 90401-2386. My email address is jmsmith@bclplaw.com

On June 12, 2019, I served the foregoing documents, described as:

DEFENDANTS' OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION TO PERMIT FILING OF SUR-REPLY DECLARATION TO ADDRESS NEW ARGUMENT AND FACTUAL MISREPRESENTATIONS ELCO MADE IN ITS REPLY ON MOTION TO AMEND

on the party listed below:

Robert A. Gutkin Ergoniq LLC 8200 Greensboro Drive, Suite 900 McLean, VA 22101	<i>Attorney for Plaintiff, DMF, Inc.</i> Tel: 202-847-6853 Email: gutkinra@ergoniq.com
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☐ **BY PERSONAL SERVICE**- I caused above-referenced documents to be personally hand-delivered to the below addressees.

☒ **BY EMAIL** – I caused a true copy of the foregoing document(s) to be served by electronic transmission to each interested party at the email address shown above. Each transmission was reported as complete and without error.

☒ **FEDERAL** - I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 12, 2019, at Santa Monica, California.


June Smith